

## DIVISION OF ADMINISTRATION

### PERSONNEL POLICY NO. 19

**EFFECTIVE DATE:** February 20, 1991; Revised March 31, 1994;  
Revised November 1, 1998

**SUBJECT:** Substance Abuse and Drug-Free Workplace  
Policy

#### **AUTHORIZATION:**

Whitman J. Kling, Jr.  
Assistant Commissioner

#### **I. PHILOSOPHY**

Consistent with the philosophy of the Division of Administration (DOA), the State of Louisiana has a long-standing commitment to working toward a drug-free workplace. In order to curb the use of illegal drugs by employees of the State of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of drug testing programs for State employees. Further, the Governor of the State of Louisiana recently issued **Executive Order No. MJF 98- 38** providing for the promulgation, by executive agencies, of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees in accordance with **Louisiana Revised Statute 49:1001**, et seq. The DOA fully supports these actions and is committed to a drug-free workplace.

#### **II. APPLICABILITY**

This policy applies to all employees and appointees of the DOA, as well as potential employees, potential appointees, individuals providing service to the DOA through a contract with a third party employer (i.e. temporary agency employees), and all other persons having

an employment relationship, with the DOA whether classified, unclassified, student employees, student interns, full-time, part-time or temporary (hereinafter "employee(s)" unless otherwise noted).

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Following a conditional job offer, potential employees and potential appointees will be required to submit to pre-employment drug testing. All employees are subject to post-accident/incident, reasonable suspicion and return-to-duty/rehabilitation monitoring drug testing. Employees who incumber safety and/or security sensitive positions and applicants who apply for safety and/or security sensitive positions are subject to both random and pre-selection drug testing. Finally, prior to being placed in a safety and/or security sensitive position from a non-safety and/or security sensitive position through reassignment, temporary detail, promotion or demotion, etc., an employee is required to undergo drug testing. A list of the safety and/or security sensitive positions within the DOA is attached as **Appendix A**.

### **III. REQUIREMENTS**

1. To maintain a safe and productive work environment, each DOA employee is required to:
  - a. Report for duty in the physical and emotional condition which maximizes his/her ability to perform assigned tasks in a competent and safe manner;
  - b. Promptly and cooperatively submit to drug testing when required by a supervisor or appointing authority;
  - c. Notify a supervisor, prior to or immediately upon reporting for duty, when he/she has reason to believe that prescribed or over-the-counter medication may impair his/her ability to perform customary job duties or otherwise create a safety hazard. While the duration the medication will be taken should be disclosed, employees should know that it is not necessary

to disclose to the supervisor the medication being taken nor the condition for which it was prescribed. Such information may be required to be disclosed to the Medical Review Officer should circumstances or the nature of the employee's job duties warrant, as determined by the appointing authority;

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- d. Notify a supervisor on the first scheduled workday of any arrest or conviction for a criminal, drug or drug-related offense which occurs on or off duty, including DWI arrests and convictions.
2. The DOA prohibits the use, abuse and presence of illegal or unauthorized drugs, and other prohibited substances in the bodies of its employees while on duty, on call or engaged in business, on or off the DOA/State premises.
    - a. The presence of illegal or unauthorized drugs, and other prohibited substances in a State vehicle while on or off duty is also prohibited.
    - b. Illegal or unauthorized drugs include any drug which is not legally obtainable; any drug which is legally obtainable, but has been illegally obtained; prescription drugs not being used in accordance with the prescription; or any substance which affects the employee's ability to safely and competently perform assigned duties. A Controlled Substance is a drug, chemical substance or immediate precursor in Schedule I, II, III, IV and V of **R.S. 40:964** or Section 202 of the Controlled Substance Act (21 U.S.C 812).

#### **IV. DRUG TESTING**

All employees/prospective employees may be required to submit to drug testing as a condition of employment, as a condition of continued employment, or as a condition of being placed in a safety and/or security sensitive

position through promotion, demotion, reassignment, detail, etc. Whether announced or unannounced, tests will be administered under the following circumstances:

1. **Pre-Employment:** Drug tests are required of all prospective employees and appointees for the DOA. Each prospective employee/appointee shall be required to submit to drug screening at the designated time and place following a conditional job offer. Pursuant to **La. R.S. 49:1008**, the conditional job offer shall be withdrawn from a prospective employee/appointee testing positive for the presence of a prohibited substance in the initial screening.

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2. **Post-Accident/Incident:** Any employee directly involved in an on-duty accident shall be required to submit to drug and alcohol testing if:
  - a. The accident involves circumstances giving rise to a reasonable suspicion that the accident may have involved the employee's drug or alcohol use and the employee's action or inaction may have been a causative factor; or
  - b. The accident meets the criteria of paragraph (a) and results in or causes the release of hazardous waste as defined by **La. R.S.30:2173(2)** or hazardous materials as defined by **La. R.S.32:1502(5)**; or
  - c. The accident results in a fatality or serious bodily injury.

**"Reasonable suspicion"** is a belief, based upon reliable, objective and articulable facts derived from direct observation of specific physical and behavioral characteristics (behavior, speech, appearance, odor), which causes a prudent person to suspect that an employee has engaged in drug use.

Only an appointing authority shall require an employee to submit to post-accident/incident

testing. Generally, this decision will be based upon the recommendation of supervisory personnel at the scene who have objectively and thoroughly reviewed the circumstances of the accident/incident.

The supervisor will fully document the facts upon which the recommendation for testing is made for submission to the appointing authority within twenty four (24) hours of making the recommendation unless impractical.

**NOTE:** When post-accident/incident testing is ordered, a DOA representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

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3. **Random Testing of Incumbents in Safety and/or Security Sensitive Positions:** Random drug testing is required of all employees holding safety and/or security sensitive positions as listed in **Appendix A**. Such testing shall be periodic and unannounced, and employee selection therefor shall be by a computer-generated random selection process. All such testing shall, unless impracticable, occur during the employees normal work hours.
4. **Promotion/Reassignment/etc., to Safety and/or Security Sensitive Positions:** Current employees are required to undergo drug testing prior to being placed in a safety and/or security sensitive position as defined in **Appendix A** through reassignment, temporary detail, promotion, demotion, etc.. An offer of position change through promotion, reassignment, detail, demotion, etc., will be conditioned upon a negative drug test result and will be withdrawn if a positive drug test result is reported. The employee who tests positive is further subject to disciplinary action as specified in this policy.
5. **Reasonable Suspicion:** An employee shall be required

to submit to drug testing when he/she exhibits behavior or appearance that is characteristic of drug use. The decision to test will be by an appointing authority based upon reliable, objective and articulable facts derived from direct observation of the employee's appearance, behavior, speech, body odor or physical manifestations. The observation must be made by supervisory personnel (two, if possible) who shall record, in writing, the observation leading to the recommendation for testing, and provide such written findings to the appointing authority within twenty four (24) hours of making the recommendation unless impractical.

**NOTE:** When reasonable suspicion testing is ordered, a DOA representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

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6. **Return-to-Duty/Rehabilitation Monitoring:** Any employee who retains his/her job following a violation of this policy shall be required, **at his/her own expense**, to undergo and complete any and all treatment recommended by a certified substance abuse professional. Any such employee shall be subject to periodic drug testing. Further, any employee who voluntarily or, as a condition of continued employment, participates in a substance abuse rehabilitation program, shall be subject to random drug testing for a minimum of one (1) year (or longer as determined by the treating substance abuse professional.) Any such employee shall be required to certify, in writing, his/her understanding and acceptance of such a rehabilitation agreement as a condition of returning to work. **(The DOA reserves the right to ensure that any substance abuse treatment program or facility chosen by an employee to seek rehabilitation meets accreditation or certification to conduct such**

rehabilitation.)

## V. DRUG TESTING PROCEDURES

Drug testing pursuant to this policy shall be for the presence of marijuana, opiates, cocaine, amphetamine/methamphetamine and phencyclidine (PCP) in accordance with **La. R.S. 49:1001**, et seq. Testing shall be performed by a contractor chosen by the Office of State Purchasing, DOA. At a minimum, the testing procedure **for employees and appointees** shall assure:

1. That all specimens for drug testing are collected, stored, transported and tested in compliance with the U. S. Department of Health and Human Services (DHHS) guidelines (and applicable federal and state regulations) to ensure integrity of the testing process.
2. Urine specimens will be collected with emphasis upon the privacy rights of the employee. Direct observation of the employee during the collection of the urine specimen will be allowed only under the following conditions:

- a. When there is specific, articulable reason to believe that the individual may alter or

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substitute the specimen;

- b. When the individual has provided a urine specimen which falls outside the acceptable temperature range;
- c. When the last urine specimen provided by the individual was verified by the Medical Review Officer as contaminated, altered, or substituted; or
- d. When collection site personnel observe conduct or behavior indicating an attempt to

contaminate, alter or substitute the sample or otherwise alter the integrity of the collection process.

NOTE: In all instances in which direct observation is deemed appropriate, the designated DOA representative shall review and concur, in advance, with any decision by collection site personnel to obtain a specimen under direct observation. This representative shall maintain, in a confidential record, the full name of the reporting collection site personnel and the specific facts relied upon to approve the direct observation. The Record shall be signed by the DOA representative. All direct observations shall be conducted by the same gender collection site personnel.

3. The split sample collection methodology must be used in accordance with **La. R.S. 49:1006(D)**, with both the primary and split specimens properly stored and transported to the testing laboratory. The primary urine sample will be analyzed for the presence of marijuana, opiates, amphetamines/methamphetamine, cocaine and phencyclidine (PCP).
4. Appropriate chain of custody forms shall be utilized to ensure the integrity of each urine specimen by tracking its handling, storage and transportation from point of collection to final disposition.
5. Testing shall be performed by laboratories certified to conduct forensic urine drug testing by the U.S. Department of Health and Human Services and in strict

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compliance with DHHS Guidelines.

6. The dual testing procedure shall be used for all samples. Each primary sample that tests positive for a prohibited substance shall be subject to an additional, more precise confirmatory test (gas chromatography/mass spectrometry).



7. All positive test results (those which exceed federally established cutoff levels as set forth in **49 CFR 40, Section 40.29**), shall first be reported by the testing laboratory to the qualified Medical Review Officer (MRO). The MRO is a licensed physician knowledgeable of substance abuse who has received specialized training in interpreting and evaluating test results in conjunction with an individual's medical history and other relevant biomedical information. The MRO will review the collection procedure, chain of custody and testing methodology before contacting the employee/appointee/applicant to rule out the possibility of error or that medications, medical history or any other condition caused the positive test result.
8. If the test is confirmed to be positive by the MRO, the employee may, within 72 hours of notification from the MRO, request, in writing, directly to the MRO, that the split specimen (initially collected but separated and stored during the collection process) be tested in a different DHHS certified laboratory. This split sample testing shall be allowed if timely requested and performed at the employee's expense.
9. Once a positive test is confirmed and reported to the DOA by the MRO, an employee in a safety and/or security sensitive position will be prohibited from performing safety and/or security sensitive functions. A request for testing of the split sample will not delay any such employee's removal from performing safety and/or security sensitive functions; and
10. If testing of the split specimen results in a negative result, the MRO will cancel the positive result of the initial test. All doubts shall be resolved in favor of the employee.

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**\*\* Testing Procedures for Potential Employees/Appointees:**

The procedures outlined in Numbers 1-5 of Section V will be applicable to potential employees/appointees. Potential employees/ appointees will be informed of a positive result of a pre-employment drug screen test. The potential employee/applicant may, within 72 hours agree to pay for confirmation of the test and a review of the confirmation test by the MRO utilized by the Department.

#### **VI. ALCOHOL TESTING PROCEDURES (POST ACCIDENT)**

1. Evidential Breath Testing Devices (EBT) approved by the National Highway Traffic Safety Administration will be used by certified Breath Alcohol Technicians to determine the presence of alcohol in the employee's system.
2. The employee will be advised of the results of the breath screening test. No further testing will be required if the test result are negative. If the screening test is positive for the presence of alcohol, a confirmation test will be performed within twenty minutes, but not less than fifteen minutes of completion of the screening test. If the confirmatory test indicates a blood alcohol concentration of 0.02 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood, the results will be reported as positive to DOA's designated representative.
3. An employee occupying a safety and/or security sensitive post will be immediately removed from performing safety and/or security sensitive functions in the event of a positive alcohol test.
4. Positive test results will also be reported to the appointing authority whenever an employee refuses to complete or sign the breath alcohol confirmation testing form, provide breath or an adequate amount of breath (excluding medical inability), or fails to cooperate with the testing procedure in any way that prevents completion of the test.

## VII. ENFORCEMENT

The use of illegal drugs and other controlled or unauthorized substances will not be tolerated. Substance abuse endangers the health and well-being of our employees, prevents quality service to the public and is inconsistent with the DOA's mission. While the DOA's position is firm, we will resolve any reasonable doubt regarding the testing procedure or results in the employee's favor.

Disciplinary action will be taken in accordance with Chapter 12 of the Civil Service Rules after a complete and thorough review of the applicable data. Employees will be provided pre-deprivation notice and a meaningful opportunity to respond prior to the imposition of disciplinary action.

### 1. Penalty for the first positive test:

A first positive drug test will result in disciplinary action up and including the possibility of termination. Factors to be considered in determining the appropriate sanction include, but are not limited to, the employee's work history, length of service, current job performance and the existence of prior disciplinary action. At a minimum, the first-time offender will be **SUSPENDED WITHOUT PAY** for thirty days. During this thirty-day period, the employee shall obtain a substance abuse evaluation and commence any recommended rehabilitative treatment. Refusal to participate in the evaluation/treatment process, at the employee's expense, will result in termination.

### 2. Termination will be the recommended penalty for the following violations:

- a. Second positive drug test result or confirmed blood alcohol level above the applicable thresholds;
- b. Refusal to submit to a drug or post-accident alcohol test;

- c. Failure to cooperate in any way which prevents the successful completion of a drug or post-accident alcohol test;

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- d. Submission of a contaminated or substitute sample for testing;
  - e. Buying, selling, dispensing, distributing or possessing any illegal or unauthorized substance while on duty, in a State vehicle or on DOA/State premises;
  - f. Operating a State vehicle or personal vehicle while on duty under the influence of drugs where testing administered by an authorized official confirms a violation of this policy; and
3. Suspension will be the recommended penalty for the following violations:
- a. Failure to notify a supervisor of the use of prescribed medication when the employee believes, or has been advised or presented with information by a physician or pharmacist that medication being used may impair the employee's ability to perform his/her usual duties and responsibilities or otherwise create a safety hazard; and
  - b. Failure to notify a supervisor of an off-duty arrest or conviction of DWI or drug-related offense at the beginning of the next scheduled workday.

#### **VIII. CONFIDENTIALITY/EMPLOYEE RIGHTS**

All drug and alcohol testing results and records (including all information, interviews, reports and statements) are considered confidential communications, pursuant to **La. R.S. 49:1012**, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in an administrative or disciplinary proceeding or civil

litigation where drug use by the tested individual is relevant. Exceptions to these confidentiality provisions are limited to written employee consent; federal agencies when licensure or certification actions are required; to a decision-maker in arbitration, litigation or administrative proceedings arising from a positive drug test; and as otherwise required by law.

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In compliance with **La. R.S. 49:1011**, any employee, upon learning of a confirmed positive test result, shall, within seven working days and upon written request, have the right

of access to records and other documentation relating to the drug testing process and any records relating to the results of any relevant certification, review, suspension/revocation proceeding of the testing facility.

Employees should know that statistical records and reports of drug testing are maintained by the DOA, contract physicians and drug testing laboratories. This information is aggregate data and is used to monitor compliance and to assess the effectiveness of the drug testing program.

The DOA has no interest in informing law enforcement authorities of a positive drug test. However, nothing contained in this policy will be construed to preclude the delivery of any illegal drug, controlled dangerous substance, or other substance prohibited by this Policy, discovered in or on DOA or State property, or upon the person of a DOA employee, to law enforcement officials. Likewise, any employee engaged in the sale, attempted sale, distribution or transfer of illegal drugs or controlled substances while on duty or on DOA or State property shall be referred to appropriate law enforcement authorities.

#### **IX. EMPLOYEE ASSISTANCE PROGRAM (EAP)**

Early recognition and treatment of drug abuse or dependency are essential to successful rehabilitation. Employees experiencing a substance abuse problem are

encouraged to seek assistance from the DOA's EAP Coordinator within the Office of Personnel Services. Any such involvement will be held in strict confidence, but employees should know that supervisors and appointing authorities (who need to know) will be kept abreast of the employee's treatment and leave needs.

Employees referred to the EAP Coordinator by supervisory personnel or who, as a condition of continued employment, participate in a substance abuse rehabilitation program will be subject to the **Return-to-Duty/Rehabilitation Monitoring** testing set forth in this policy.

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#### **X. GENERAL PROVISIONS**

DOA reserves the right to have a licensed physician, of its own choosing and at its own expense, determine if use of prescription medication produces effects which impair the employee's performance or increase the risk of injury to the employee or others. In such case, where the situation is temporary and business necessity allows, the DOA will modify the employee's customary job duties or work activities for the period the employee is unable to safely perform his/her customary job duties. Alternatively, the employee may be required/permitted to use accrued leave when such leave is available.

Although the substance abuse testing defined in this policy is restricted to five specified drugs, the DOA reserves the right to require employees to submit to additional testing, if warranted. Such tests will only be administered when post-accident or reasonable suspicion testing produce negative results and the employee's behavior clearly indicates impairment or other indicia of substance use. Separate samples will be collected for these additional tests and the testing process will fully comply with DHHS regulations.

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#### **APPENDIX A**

Safety and/or Security Sensitive position - a position determined by the Appointing Authority to contain duties of such nature that the compelling State interest to keep the incumbent drug-free outweighs the employee's privacy interests.

A list of such positions within the Division of Administration (DOA) is attached hereto and is made a part hereof. The list was determined with consideration of statutory law, jurisprudence, the practices of this agency and the following examples of safety and/or security sensitive positions.

1. Positions with duties that are required or are authorized to perform the safety inspection of a structure;
2. Positions with duties that are required or are authorized to have access to prison or incarcerated individual;
3. Positions with duties that are required or are authorized to carry a firearm;
4. Positions with duties that allow access to controlled substances (drugs);
5. Positions with duties that are required or are authorized

to inspect, handle, or transport hazardous waste as defined in R.S. 30:2173(2) or hazardous material as defined in R.S. 32:1502(5);

6. Positions with duties that are required to operate or maintain power plant equipment, or supervise employees who operate or maintain power plant equipment;
7. Positions with duties that require the incumbent to operate or maintain any heavy equipment or machinery or with duties that require on-the-job instructing or on-the-job supervising of these incumbents; and
8. Positions with duties that require at least 50 percent of the work period to be spent in the operation or maintenance of a public vehicle or that require on-the-job supervision of the maintenance of a public vehicle.

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### **EMPLOYEE ACKNOWLEDGMENT**

My signature heron acknowledges that:

1. I have received a copy of the Division of Administration's **Substance Abuse and Drug-Free Workplace Policy**;
2. I have read this policy or have had someone read this policy to me;
3. I understand the content of this policy; and
4. I agree to comply with the terms and conditions of this policy.

I further acknowledge that compliance with this policy is a condition of my employment and continued employment.



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DATE

EMPLOYEE-S SIGNATURE

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Section

Printed (Last Name, First Name)